

**Letter of Findings: 01-20180850
Indiana Individual Income Tax
For The Tax Years 2014 and 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was an Indiana resident for the tax years 2014 and 2015 because he did not properly file the required State of Legal Residence Certificate, federal Form DD 2058, to change his residence or domicile.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: 50 U.S.C. § 4001; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 27 (January 2014); [45 IAC 3.1-1-21](#).

Taxpayer protests the Department's assessment of individual income tax for 2014 and 2015.

Statement of Facts

Taxpayer was an Indiana resident in the military service and received W-2 wages, on which tax was withheld for Indiana and local income tax purposes. Taxpayer timely filed a 2014 Indiana Part-Year or Full-Year Nonresident Individual Income tax Return (IT-40PNR) and a 2015 Reciprocal Nonresident Indiana Individual Income tax Return (IT-40RNR), claiming refunds of the tax withheld. The refunds were issued.

In 2017, the Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for both 2014 and 2015 and thus Taxpayer's income was subject to Indiana income tax and that the refunds were erroneously issued. As a result, the Department proposed to assess additional Indiana income tax for the tax years at issue, including interest. Nonetheless, Taxpayer was allowed a military deduction in addition to the exemptions and credits.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

Discussion

The Department, based on verifiable information such as Taxpayer's State of legal Residence Certificate (Form DD2058), determined that Taxpayer was an Indiana resident for the tax years at issue and that Indiana income tax was due for 2014 and 2015. Taxpayer, to the contrary, argued that his W-2 income was not subject to Indiana income tax because he did not live in Indiana during 2014 and 2015. Thus, the issue is, for the tax years at issue, whether Taxpayer's income was subject to Indiana income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of*

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Nonetheless, when a person is a servicemember, the servicemember's residence or domicile is determined according the federal law. Specifically, 50 U.S.C. § 4001(a)(1) provides, "A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." To further explain, the Department's Income Tax Information Bulletin 27 (January 2014), 20140129 Ind. Reg. 045140013NRA, in relevant part, states:

RESIDENCY

Military personnel who enter the armed forces as Indiana residents remain legal residents of Indiana regardless of duty station until official action is taken to change their legal residence. This can be accomplished by filing a State of Legal Residence Certificate, Form DD 2058, with the military personnel office

In this instance, Taxpayer asserted that "I neither resided in Indiana nor served active duty in Indiana in 2014 [and 2015]. This income was reported on the attached Ohio return[s], but [Ohio] also allows full credit for military income" Taxpayer thus argued that he was not liable for the additional Indiana income tax because his income was reported to Ohio. Taxpayer offered copies of his Ohio returns to support his protest.

Upon review, however, Taxpayer is mistaken. As mentioned above, Taxpayer has been a servicemember and therefore his residence or domicile is determined according to the federal law. Taxpayer began his service, living in Indiana. Therefore, Indiana is Taxpayer's residence or domicile until he properly files the required "State of Legal Residence Certificate, Form DD 2058" to change his residence or domicile pursuant to the Information Bulletin 27. Taxpayer did not file the required "State of Legal Residence Certificate, Form DD 2058" to properly change his residence or domicile for the tax years; therefore, his residence or domicile remained in Indiana. Thus, Taxpayer was required to file the Indiana Full-Year Resident return and his income for the tax years was subject to Indiana income tax.

Since the Department concludes that Taxpayer was domiciled in Indiana, the question regarding whether Taxpayer spent more than 183 days of 2014 and 2015 in Indiana is moot.

Given the totality of the circumstances, the Department is not able to agree that Taxpayer met his burden of demonstrating that he was not Indiana resident for the tax years at issue.

FINDING

Taxpayer's protest of the residency issue is respectfully denied.

July 3, 2018

